IN THE

Supreme Court of the United States.

OCTOBER TERM, 1900.

No. 149.

JOHN A. MACDONALD, PLAINTIFF IN ERROR,

vs.

THE COMMONWEALTH OF MASSACHUSETTS.

BRIEF FOR THE PLAINTIFF IN ERROR.

STATEMENT OF THE CASE.

This is a writ of error to the superior court of Suffolk county, Massachusetts. The plaintiff in error was indicted in August, 1898, for forging and uttering as true certain bank checks, the indictment also charging the plaintiff in error with having been previously twice convicted and sentenced to prison for not less than three years, once in Massachusetts and once in New Hampshire. The plaintiff was tried, found guilty, and sentenced to the State prison for twenty-five years, as an habitual criminal, under Statutes 1887, chapter 435, section 1.

ASSIGNMENT OF ERRORS.

As errors of law, the plaintiff in error contends that:

1. Statute of 1887, chapter 435, violates certain provisions of the Constitutions of the United States and of this Commonwealth, and is therefore void.

2. The court had no jurisdiction because the indictment charged the commission of a crime outside of this Commonwealth, to wit, in New Hampshire.

3. The trial was irregular because of misjoinder of counts.

4. That the plaintiff in error was not represented at his trial by counsel, that his constitutional rights were not explained to him by the court, that he received no assistance from the Government in procuring counsel, and that by reason of his poverty he was unable to retain counsel.

5. That after the judge's charge on the whole indictment the jury returned a verdict of guilty; that when the jury were asked what they had to say on the habitual-criminal ~~charge~~ count the judge, stating that he had forgotten to charge them as to this matter, then instructed them upon that ~~charge~~ count, and that the jury, after again retiring, returned the second time, rendering a verdict of guilty on the habitual-criminal ~~charge~~ count.

The Commonwealth pleaded *in nullo est erratum* to the assignments of errors in law, and traversed certain of the assignments of errors in fact. The case comes to this court on

the petition, the assignments of errors, the record of the superior court, the Commonwealth's plea, and the agreed statement of facts and decisions of the supreme judicial court.

EXTRACTS FROM THE CONSTITUTIONS OF THE UNITED STATES AND OF THIS COMMONWEALTH AND THE STATUTES OF MASSACHUSETTS.

From the Constitution of the United States.

"ARTICLE I, SECTION 9. * * * No bill of attainder or *ex post facto* law shall be passed." * * *

"ARTICLE III, SECTION 2. * * * The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed.

"ARTICLE IV, SECTION 2. The citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." * * *

Amendment to the Constitution.

"ARTICLE V. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Amendment to the Constitution.

"ARTICLE VI. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense."

Amendments to the Constitution.

"ARTICLE XIV, SECTION 1. * * * No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

From the Constitution of Massachusetts.

Declaration of Rights.

"ARTICLE XII. No subject shall be held to answer for any crimes or offense, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse, or furnish evidence against himself. And every subject shall have a right to produce all proofs that may be favorable to him; to meet the witnesses against him face to face, and to be fully heard in his defense by himself, or his counsel, at his election. And no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled,

or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land.

"ARTICLE XXIV. Laws made to punish for actions done before the existence of such laws, and which have not been declared crimes by preceding laws, are unjust, oppressive, and inconsistent with the fundamental principles of a free government.

"ARTICLE XXVI. No magistrate or court of law, shall demand excessive bail or sureties, impose excessive fines, or inflict cruel or unusual punishments.

From St. 1887, *c.* 435.

"SECTION 1. Whoever has been twice convicted of crime, sentenced and committed to prison, in this or any other State, or once in this and once at least in any other State, for terms of not less than three years each, shall, upon conviction of a felony committed in this State after the passage of this act, be deemed to be an habitual criminal, and shall be punished by imprisonment in the State prison for twenty-five years: *Provided, however,* That if the person so convicted shall show to the satisfaction of the court before which such conviction was had that he was released from imprisonment upon either of said sentences, upon a pardon granted on the ground that he was innocent, such conviction and sentence shall not be considered as such under this act.

"SECTION 2. When it shall appear to the governor and council that any person sentenced to the State prison as an habitual criminal has reformed, they may issue to him a permit to be at liberty during the remainder of his term of sentence, upon such conditions as they deem best; and they may revoke said permit at any time previous to its expiration. The violation by the holder of a permit, granted as aforesaid, of any of the terms or conditions of such permit, or the violation of any of the laws of this Commonwealth, shall of itself make void said permit.

"SECTION 3. When any permit granted under the provisions of the preceding section has been revoked, or has become void as aforesaid, the governor shall issue his warrant authorizing the arrest of the holder of said permit and his return to said State prison. Said warrant may be served by any officer authorized to serve criminal process in any county in this Commonwealth. The holder of said permit, when returned to said State prison as aforesaid, shall be detained therein according to the terms of his original sentence; and in computing the period of his confinement the time between his release upon said permit and his return to the State prison shall not be taken to be any part of the term of the sentence."

ARGUMENT.

First Assignment of Error.

The court erred in such judgment against the defendant because the indictment charges the defendant with the commission of a crime punishable by the laws of another State and which was committed in another State, and attempts to embrace within its provisions the jurisdiction of another State, and is in conflict with the provisions of the Constitution of the United States and its amendments—that is, article 14 of its amendment. The court invaded the prisoner's constitutional rights when it assumed an extra-territorial jurisdiction and sentenced him to twenty-five (25) years as an habitual criminal for a crime committed in New Hampshire.

That the law under which the defendant was sentenced was unconstitutional, inasmuch as its enactment was contrary to the provisions of article 3, section 2, United States

Constitution, which holds that all trials for crimes except in cases of impeachment shall be held in the States where crimes are committed, and the court erred in assuming jurisdiction of a crime committed in another State, and such action was unconstitutional.

The conviction in the State of New Hampshire was entirely foreign to our State and could not as a matter of law be made an integral part of an offense committed in this State. The court embraced within its jurisdiction the jurisdiction of another State, and its action was extraterritorial, extrajudicial, and wholly void. If the court can take jurisdiction and sentence a man for a crime committed and expiated outside its borders and in another State, then the court could sentence a man under Public Statutes 1887, chapter 435, for a crime committed and expiated in States of Mexico or States of South and Central America, or any other foreign State or power, just as legally as a court can for a crime committed in another State. For instance, a man may be sentenced to State's prison in another State for a crime which is not a crime in Massachusetts, and *vice versa*. Under the different codes and constitutions of the various States the anomaly is presented of a crime made an integral part of an habitual-criminal count for which, if it was committed in another State, there could be no penalty.

That the law under which the defendant was sentenced is unconstitutional, inasmuch as its enactment was contrary to the provisions of article 3, section 2, United States Constitution, which holds that all trials for crimes, except in cases of impeachment, shall be held in the States where the crimes are committed, and the court erred in assuming jurisdiction of a

crime committed in another State, and such action was unconstitutional.

Art. 3, sec. 2, U. S. Const.
Art. 6, Amend. U. S. Const.
Art. 14, Amend. U. S. Const.

If a man under sentence of life imprisonment for murder was pardoned in Massachusetts on the ground that he should leave the country, it needs no argument to prove that if he went to Rhode Island, the Massachusetts laws could not reach him, and that the United States Constitution would not hold the above to be a violation of his parole. A State's jurisdiction ends at its borders. A court in Massachusetts could not punish one for a contempt of its decrees in a foreign State.

U. S. Const. Amendment, art. 14, sec. 1.

All persons born or naturalized in and subject to the jurisdiction thereof are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty, or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Art. 14, sec. 1, U. S. Const.

The trial of all crimes, except in cases of impeachment, shall be by jury, and such trial shall be held in the State where the said crimes shall have been committed.

Art. 6, Amend. U. S. Const.

In all criminal prosecutions the accused shall have a right to a speedy and public trial by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation, to be confronted with the witnesses against him, to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Cooley, Const. Lim., chap. 10, 11.

Second Assignment of Error.

That any statute allowing the Government to make bad character a part of its original case is unconstitutional and void and oppressive, because it infringes upon certain inalienable rights of persons charged with crime. Such rights are guaranteed to every defendant by the United States Constitution and its amendments, which guarantee a fair and impartial trial to persons charged with crimes.

In criminal proceedings the accused is permitted to offer evidence of good character.

Commonwealth *vs.* Webster, 5 Cush., 295, 324, 325.
McDaniel *vs.* State, 8 Sm. & M., 401.
People *vs.* Maett, 23 Hun., 60.
Harrington *vs.* State, 19 Ohio St., 264.
Carter *vs.* Com., 2 Va. Cases, 169.
State *vs.* Merrill, 2 Dev., 269.
Armor *vs.* State, 63 Ala., 173.
Laura Fair's case, 43 Cal., 137.
State *vs.* Daley, 53 Vt., 422–466.

Such evidence of good character being offered by the accused, the prosecution is permitted to introduce similar evidence of bad character in rebuttal.

The prosecution cannot, however, make bad character part of its original case; the initiative must be taken by the accused.

1 Wharton's Crim. Law, secs. 636–646.
3 Davies' Ab., c. 84, art. 1, sec. 5.
Oliver *vs.* State, 11 Brown (Neb.), 427.
State *vs.* Cresen, 38 Mo., 372.

C. J. Shaw, in Com. *vs.* Webster, 5 Cushing, 324, says:

"It is the privilege of the accused to put his character in issue or not. If he does, and offers evidence of good character, then the prosecution may give evidence to rebut and counteract it. But it is not competent for the Government to give in proof the bad character of the defendant, unless he first opens that line of inquiry by evidence of good character."

If it can be said that the prior convictions and commitments only proved particular facts and not the general bad character of the accused, the case of Com. *vs.* O'Brien, 119 Mass., 342, says:

"Where a person accused of a criminal offense, introduced evidence tending to show that his general reputation is good, it is not competent for the government in reply, to put in evidence of particular facts."—Judge Endicott.

A defendant can testify if he sees fit. If he does not choose

to avail himself of that privilege unfavorable inferences are not to be drawn to his prejudice from that circumstance.

People *vs.* Tyler, 36 Cal., 522.

State *vs.* Cameron, 40 Vt., 555.

Carne *vs.* Litchfield, 2 Mich., 340.

Article 5, amendment to United States Constitution, declares that no man shall be compelled in any criminal case to be a witness against himself, nor, as above stated, can any unfavorable inference be drawn against him for failure to so testify, but this method of procedure destroys the presumption of innocence, which constitutional shield the law throws over every man, and prejudices his case in an unheard-of manner and really deprives him of every right which he ought to possess under the United States Constitution and amendments and Massachusetts constitution and bill of rights.

Cooley's Const. Lim., 387, 388.

This method of trying a case by introducing evidence of previous bad character of the defendant, and then putting in evidence of the particular crime for which he is indicted, can hardly be said to be a fair and impartial trial, and one such as is guaranteed by the Constitution.

Bill of Rights, art. 1, 12.

By introducing records of prior convictions and commitments in the habitual-criminal count, a man is practically compelled to furnish evidence against himself, and thereby violating article 12, Bill of Rights, and United States Constitution, article 5, amendments.

Leonard v. Leonard, 151 Mass. Reports p. 151.

Third Assignment of Error.

The crime of being an habitual criminal was unknown to the common law, and also to the statute law prior to 1887. It is the creation of a statute, and when the statute was passed allowing joinder of offenses not permissible at common law there was no such crime known as that of an habitual criminal, and consequently there is nowhere in the law, statutory or otherwise, any authority permitting the joinder of an habitual-criminal count to a count for any other felony, and the misjoinder is manifest, and the trial was therefore irregular.

Public Statutes, chapter 213, section 18, says:

"Two or more counts describing different offenses depending upon the same transactions may be set forth in the same complaint or indictment, if the complaint or indictment contains an averment that they are different descriptions of the same act."

Now, this Public Statute, 213, section 18, was passed many years before the habitual-criminal act was enacted, and up to the present day there is no statutory authority for the joinder of an habitual-criminal count to a count for any other felony. Being unlawfully joined, the trial was irregular and consequently void, and the whole proceeding invalid.

This order of proof in an habitual-criminal case has no statutory or common-law authority whatever, and is directly opposed to all the prisoner's rights under the Constitution of the United States, guaranteeing him a fair and impartial trial.

No part of the record of an indictment or any count thereof presented and signed by a foreman of a grand jury and returned under oath to the court upon which a trial is had by a jury and a verdict of guilty rendered on that count and sentence imposed thereon can be rejected as surplusage.

This point was not considered or raised in the cases the supreme judicial court of Massachusetts cites in rendering this opinion.

In Com. *vs.* Cody, cited in 165 Mass., 138, the habitual-criminal count was abandoned by the Government, and no verdict was taken thereon.

To say that the doings of a grand jury signed and returned under oath to the court are a nullity or surplusage and could be rejected as surplusage, and that a sentence of twenty-five years can be imposed in such a so-called nullity or surplusage, strikes at the very foundations of criminal procedure and infringes upon the rights guaranteed by the United States Constitution and amendments to the humblest citizen of this country.

The supreme judicial court of Massachusetts practically contradicts this in the eighth assignment, wherein it considers error or omission by sending jury out for the second time to consider the habitual-criminal count separately and alone after they had finished on the forgery counts. If this count was a nullity, why were jury sent out to bring a verdict in upon it? The words habitual-criminal "charge" are absolutely unheard of in criminal procedure. An indictment consists of counts. No one ever heard of an integral part of an indictment being called a "charge" and of a verdict bein rendered upon a "charge" and not upon a count.

It has been considered heretofore a count in Massachusetts and so worded in opinions (165 Mass., p. 138), distinctly calls it count, and in every indictment for being a habitual criminal under the act in Massachusetts since law was passed it has been presented and returned by a grand jury as a count in the usual manner and form of every felony.

Commonwealth *vs.* Walker, 163 Mass., 226.

Fourth Assignment of Error.

It appears by absence of any record of an appearance of counsel that the prisoner at his trial was not represented by counsel, nor were his constitutional rights explained to him by the court, and in consequence thereof said trial was unconstitutional and contrary to article 12, constitution of Massachusetts, and article 6, Constitution of the United States. The prisoner declares upon oath, as per enclosed affidavit, that he was unrepresented by counsel at his trial, and that he received no assistance from the Government in procuring counsel, and by reason of his poverty he was unable to retain counsel, and that the law under which he was sentenced is unconstitutional, inasmuch as its enactment was contrary to the provisions of the amendments of the United States Constitution, article 6, guaranteeing the accused counsel in all criminal prosecutions, and that it is also contrary to article 12, constitution of Massachusetts.

The prisoner contends that in such a crime as he was indicted for he had a right to have counsel assigned him by the court. The punishment was an infamous one, and defendant contends that the words as used in article 6, amendment to United States Constitution, are mandatory and leave

nothing to the discretion of the court. He also insists that the Government, by introducing the record of a foreign conviction, violated that part of the constitutions which say that no man shall be compelled to furnish evidence against himself, and destroyed the presumption of innocence.

Art. 5, Amend. U. S. Const.

This right is recognized in New York and numerous States, particularly in the West, where a defendant, in cases not capital, has counsel assigned him by the court when he is charged with an infamous crime and is unable by reason of his poverty to hire counsel.

Any action of the court during the progress of a trial for felony which deprives the defendant of a substantial legal right in the premises or, to any extent to his prejudice, withholds or abridges any constitutional right of the defendant and by him claimed on trial is a proper matter for review on appeal.

People *vs.* Keenan, 13 Cal., 384.

Defendant contends that this case is analogous to the above, and that his rights were not sufficiently protected.

Fifth Assignment of Error.

That the law under which the defendant was sentenced is unconstitutional under United States Constitution, article 8 of amendments thereof, and article 26, constitution of Massachusetts, in that the punishment inflicted is a cruel and unusual punishment.

Defendant contends that this sentence in itself is a cruel

and unusual punishment, in that it inflicts practically a life sentence upon every one sentenced under it. This sentence was unheard of at the early common or statutory law, and inflicts punishment for crimes for which the defendant has already expiated. It is foreign to Federal and State constitutions and is vindictive in its spirit, and the discretion which the act commits to the court is a hardship unknown to any system of criminal jurisprudence, and is in violation of article 8, amendments to United States Constitution.

Sixth Assignment of Error.

That the said sentence was unconstitutional, inasmuch as its enactment was contrary to the provisions of article 4, section 2, United States Constitution, which gives to every citizen the equal protection of the laws, and therefore the State by assuming the jurisdiction of a foreign crime once expiated in New Hampshire did not give the defendant equal protection of the laws or the protection a citizen of the United States under the United States Constitution and amendments is entitled to in felonious cases.

A defendant has served time in New York and New Jersey of terms of three or more years each. Now, if this man is afterwards tried in Massachusetts for a felony, the habitual-criminal act is powerless to punish him; whereas, if he served time in one State and also in Massachusetts, the Government claims that the act would apply. There is no equal protection of the laws in such a case, and the defendant's constitutional rights are infringed upon. In fact, under this a man may serve time in many States of the Union and commit a felony here, and then escape the habitual-crimi-

nal penalty because he has not previously served a term in this State. Serving a term of imprisonment here is a condition precedent to the act taking effect, and is in violation of the equal protection of the laws to a citizen of the United States, which the United States Constitution gives him (article 4, section 2).

Seventh Assignment of Error.

That the law under which the prisoner was sentenced, Public Statutes 1887, chapter 435, was unconstitutional, inasmuch as its enactment was contrary to the provisions of article 1, section 9, of the United States Constitution, which declare that no *ex post facto* laws shall be enacted.

The Constitution says that no man shall be compelled to furnish evidence against himself. If a man's past record is considered and made a count of a felony, it destroys the presumption of innocence, which constitutional shield the law gives the accused in all trials of felony.

Cooley, Const. Lim., 318–328.

Kring *vs.* Missouri, 107 U. S., 221, 228, 229, 230.

It is plain from the discussion and also on fundamental principles that in order to render legislation unconstitutional as *ex post facto* it is not necessary to show that it must be detrimental to all persons charged with offenses. It is sufficient that it materially alters their conditions in a manner which may be substantially detrimental to some.

The defendant was entitled to a judicial termination of his sentences in New Hampshire and Massachusetts. This law is unconstitutional and retroactive, because it deprived

the prisoner charged with crime to a judicial determination of his sentence given by the law existing when the offense was committed.

The defendant was entitled to a sentence on the crime of which he was convicted. There is nothing in the record to prevent the court from sentencing him on that crime—*i. e.*, of forgery and uttering—after his term of twenty-five years for being an habitual criminal has expired. This procedure is clearly contrary to the Constitution and a man's rights therein.

Section 2, Acts of 1887, chapter 435, simply reiterates the pardoning power already vested in the governor and council from time immemorial, and does not give the prisoner additional rights.

See Cooley, Constitutional Limitations, page 319:

"I will state what laws I consider *ex post facto* laws within the intent of the prohibition.

"1. Every law that makes an action done before the passing of the law, and which was innocent when done, criminal, and punishes such action.

"2. Every law that aggravates a crime, and makes it greater than it was when committed.

"3. Every law that changes the punishment and inflicts a greater punishment than the law annexed to the crime when committed.

"4. Every law that alters the legal rules of evidence, and receives less or different testimony than the law required at the time of commission of the offense, in order to convict the offender. All these, and similar laws, are manifestly unjust and oppressive."

Defendant contends that the habitual-criminal law (Acts of 1887, 435) is *ex post facto* and in violation of article 1,

section 9, United States Constitution, and article 24, Massachusetts constitution, bill of rights.

Eighth Assignment of Error.

That the law under which the prisoner was sentenced (Public Statutes 1887, chapter 435) was unconstitutional, inasmuch as its enactment was contrary to the provisions of article 5 of the United States Constitution and amendments thereto—no man shall be put in jeopardy twice for the same offense—which appears by the court taking jurisdiction of the crime committed and expiated in New Hampshire. The prisoner's sworn affidavit, annexed herewith, states that after the judge's charge upon the whole indictment the jury returned a verdict of guilty upon the four counts, as appears by the record, but said nothing in his charge on the habitual-criminal count; that when the jury were asked by the clerk what they had to say on the habitual-criminal count, the judge arose and stated that he had forgotten to charge them upon the habitual-criminal count, and then proceeded to instruct them upon that count, and the jury again retired and returned for the second time, bringing in a verdict of guilty on the habitual-criminal count; that this whole procedure was irregular, prejudicial, and unconstitutional, and that the prisoner was unable, by lack of counsel, to take exceptions to these facts.

The petitioner was put in jeopardy twice for the same offense when the court took jurisdiction of the crime committed and expiated in New Hampshire, and sentenced him to twenty-five years as an habitual criminal.

We contend that the United States constitutional rights of

the defendant tried in the State court were infringed upon or abridged to his detriment.

We claim that petitioner was put twice in jeopardy, contrary to the United States Constitution and amendments.

Cooley, Const. Lim., 398–401.

One trial and verdict must, as a general rule, protect him against any subsequent accusation of the same offense, whether the verdict be for or against him, and the verdict constitutes a bar to a new prosecution.

Cooley, 398, 399.

It is plain that the using of the New Hampshire verdict in a prosecution in this State was putting a man in jeopardy twice for the same offense, since the defendant was again sentenced in Massachusetts on a count for that crime committed and expiated in the foreign State of New Hampshire.

Ninth Assignment of Error.

The prisoner waives no rights which may not be stated in detail here and which may be apparent on the record, either under the Constitution of the United States and amendments thereof or under the Massachusetts constitution and bill of rights.

Prisoner contends that the law under which he was sentenced, viz., Public Statutes 1887, chapter 535, is in violation of the letter and spirit of the Constitution of the United States and the amendments thereof, and constitution of Massachusetts and bill of rights, and that said law is therefore unconstitutional.

Argument on Facts Agreed to by Parties.

Public Statutes, chapter 170, section 42, applies to criminal as well as civil cases. It applies to cases where the jury have not agreed upon a verdict and have not finished their deliberations. In the case at bar the jury had finished their deliberations, and, the judge having forgotten to charge them upon the habitual-criminal count, they had reported a verdict on all they were instructed upon. The habitual-criminal count not having been placed before them for their consideration when the judge sent them out for the first time, he had no authority to send them out for a second time because they had finished their deliberations, and the presiding justice had no authority to send them out again because they did not ask for any instructions as to the law.

There is a distinction between cases of felony and misdemeanors, and again between civil cases and criminal cases. We contend that in this case, in which conviction carried an infamous punishment, all the rigor of a capital case should have been carried out regarding the rules for a jury.

Defendant also claims that the action of the court in sending the jury out for a second time, after they were charged and had finished their deliberations, is in violation of the Constitution of the United States and amendments.

The agreed facts will show that the defendant was informed that he could only challenge two of the jurors without cause (whether any challenges are allowed on an habitual-criminal count defendant has not been able to determine from any legal authority, but, being a count for a crime, defendant must be entitled to at least two pre-emptory

challenges. The statutes have not provided for challeng
in such a case, and by not so doing had infringed upon th
defendant's constitutional rights guaranteeing a fair an
impartial trial), and said trial was in violation of the Co
stitution of the United States and amendments.

Respectfully submitted.

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